Canada-United States Free
Trade AGreemtn Implementation
Act

Backgrounder

BP-193E

THE CANADA-UNITED STATES FREE TRADE AGREEMENT IMPLEMENTATION ACT

ECONOMICS DIVISION
LAW AND GOVERNMENT DIVISION
SCIENCE AND TECHNOLOGY DIVISION

JANUARY 1989

Library of Parliament
Bibliothèque du Parlement

Research Branch

The Research Branch of the Library of Parliament works exclusively for Parliament, conducting research and providing information for Committees and Members of the Senate and the House of Commons. This service is extended without partisan bias in such forms as Reports, Background Papers and Issue Reviews. Research Officers in the Branch are also available for personal consultations in their respective fields of expertise.

Cat. No. YM32-2/193E
ISBN 0-660-13298-2

CE DOCUMENT EST AUSSI
PUBLIÉ EN FRANÇAIS

TABLE OF CONTENTS

Page

CANADA
LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

THE CANADA-UNITED STATES FREE TRADE AGREEMENT IMPLEMENTATION ACT

INTRODUCTION

Bill C-130, introduced in the House of Commons on 24 May 1988, and passed by the House on 31 August 1988, was to implement the Canada-United States Free Trade Agreement (hereafter referred to as the "Free Trade Agreement," the "Agreement" or the "FTA"). However, with the call of a federal election, Bill C-130 died on the Order Paper. Bill C-2, An Act to Implement the Free Trade Agreement between Canada and the United States of America was introduced in the House of Commons on 14 December 1988. It was passed by the Senate and received Royal Assent on 30 December 1988. Although this bill will now form a chapter in the Statutes of Canada, it will be referred to as Bill C-2 in this paper.

Bill C-2: (a) affirms the authority of the federal government to fulfil Canada's obligations under the Agreement (clause 6); (b) approves the FTA, provides for the appointment of Canada's representatives to the Canada-United States Trade Commission (the body established to supervise implementation of the Agreement) and, where necessary, allows the federal government to implement the wine and distilled spirits provisions of the Agreement (Part I); (c) establishes a Procurement Review Board to deal with the procurement practices of federal government departments (Part II); (d) amends the Special Import Measures Act to implement the emergency measures provisions of Chapter 11 of the FTA and to allow for the creation of binational panels to review decisions respecting the application of Canadian antidumping and countervailing duty laws to goods imported from the United States (Parts III and V); and (e) amends some 26 other federal statutes to harmonize them with the FTA (Parts IV and V).

This legislative summary describes the manner in which Bill C-2 implements the Free Trade Agreement. In doing so, it examines a number of the bill's general implementing clauses as well as those which amend the numerous statutes to which the bill refers. Each Part of the bill, except Part V, is discussed under a separate heading. Part V, which contains additional amendments relevant to statutes found in Parts III and IV, is considered within the context of those Parts. The economic and other implications of the FTA are not discussed.*

PART I - GENERAL IMPLEMENTATION OF THE AGREEMENT
Clauses 8-12, p. 4-6

For the most part, the clauses found in Part I of Bill C-2 deal with the general implementation of the FTA. Clause 8, for example, approves the Free Trade Agreement. Clause 11 authorizes the Governor in Council to establish committees, panels and other bodies that may be required to perform functions and exercise powers under the FTA. Canada's representatives to the Canada-United States Trade Commission, the body charged with supervising the implementation of the FTA and resolving disputes regarding its implementation, are appointed pursuant to clause 12.

Implementation of Chapter 8 of the Free Trade Agreement is covered by clause 9 of the bill. That chapter is concerned mainly with provincial pricing, listing and distribution practices for wine and distilled spirits.

With regard to each of these practices the FTA states the following:

(a) Mark-ups on wine prices in excess of the actual cost of service differential between Canadian and U.S. products will be phased out over six years. As of 1 January 1989, all mark-ups on distilled spirits that represent more than the actual cost of service differential between products of the two countries will be eliminated. Other discriminatory pricing measures will also end.

---

* It should be noted that the concluding clause of the introductory part of the bill was included to respond to concerns about water. Clause 7 states in general terms that "for greater certainty" the FTA (except Article 401) does not apply to water.

(b) The listing practices of provincial liquor control boards will be transparent, non-discriminatory and open to challenge by the applicant.

(c) Subject to certain exceptions, provincial distribution policies and practices will allow U.S. wine and distilled spirits to be treated as favourably as Canadian products.

Clause 9 authorizes the Governor in Council to make regulations to implement Chapter 8 of the FTA in a province. It also allows federal regulations to be made to require or to prohibit any activity in respect of that Chapter. Where a province has taken the necessary action under its laws to implement Chapter 8, federal regulations in that regard do not apply. However, before a federal regulation is made under clause 9, consultations between the federal government and the affected province have to take place.

It should be noted that clause 6 provides that Bill C-2 does not limit federal authority to implement the Agreement or fulfil any of Canada's obligations thereunder.

PART II - PROCUREMENT REVIEW BOARD
Clauses 13-22, p. 6-10

Part II of Bill C-2 implements Chapter 13 of the FTA and in particular it establishes the Procurement Review Board called for under paragraph 3 of Article 1305 of the FTA.

The Procurement Review Board created under clause 14 of the bill consists of no more than five members appointed by the Governor in Council, and it has all the powers of a superior court of record. The principal functions of the Board, set out under clauses 15 to 19, are to investigate complaints filed by potential suppliers in relation to contracts awarded or to be awarded by government, and to make recommendations thereon.

Under clause 15, the Board has jurisdiction to review all aspects of the procurement relating to a prescribed contract or contract of a prescribed class, ranging in value from the lower threshold fixed by Article 1304 of the FTA (U.S.$25,000 or approximately CDN$30,000) to the

upper threshold fixed by the GATT Agreement on Government Procurement (SDR* 150,000 or approximately CDN$244,500), or such lower or higher sums as might respectively be prescribed. Furthermore, the Board's reviewing authority extends only to contracts issued by a "governmental institution," a term which is defined at clause 13 as incorporating by reference all the governmental entities listed for Canada in Annex 1304.3 of the FTA, subject to any additions or exclusions that might be prescribed by regulation. The entities listed in the Annex apply to federal institutions alone; provincial and municipal institutions are not covered.

If the Board decides to investigate a complaint, it is required under clause 16 to give notice to all relevant parties; it also has the authority to order the postponement of the contract award pending the termination of the investigation unless the governmental institution in question certifies that the procurement is urgent or that a delay would be prejudicial to the public interest. Clause 17 provides that, in considering any complaint, the Board has to be guided by whether the requirements of Article 1305 of the FTA or other prescribed requirements have been complied with. At the completion of its investigation, the Board prepares and submits to the relevant parties a report containing its findings and recommendations, if any.

Clause 19 sets out the kind of recommendations the Board can make following a finding of non-compliance. For example, the Board can recommend that new bids for the contract be sought, that the contract be terminated, or that compensation or the contract be awarded to the complainant; the Board may also make a cost award to the complainant, payable out of the Consolidated Revenue Fund.

Under clause 20, the governmental institution at issue is required to consider the Board's report and endeavour to implement the recommendations to the greatest extent possible. If it decides against full implementation, it has to submit its reasons to the Board in a written report within 10 days; conversely, if it decides on implementation, it has

---

* SDR means Special Drawing Rights, an International Monetary Fund (IMF) supplemental monetary reserve asset that IMF countries regard as complementary to gold and reserve currencies in settling their international accounts.

to submit a report within 60 days, stating whether the recommendations have been implemented fully. This reporting requirement is the only obligation placed on the governmental institution; the Board has the authority to compel compliance.

Clause 21 authorizes the Governor in Council to make any regulations necessary to carry out the purposes and provisions of this Part of the bill and Chapter 13 of the FTA. Notable among these regulatory powers are those enabling the Governor in Council to: exempt any particular contract or class of contracts from the application of Part II; exclude from the definition of "governmental institution" any entity listed for Canada in Annex 1304.3 of the FTA; or include additional federal entities within the definition. Under subclause 21(2) the Governor in Council may also by regulation assign to the Board certain powers, duties and functions regarding any aspect of government procurement to which Part II applies.

Clause 22, the last provision under this Part, requires the Board to submit an annual report to the Minister who, in turn, is required to table the report before Parliament within the prescribed time limits. In the report, the Board has to provide information on the cases dealt with during the year, the recommendations made, the cases in which the recommendations have been fully implemented, and the cases in which they have not been. Reasons are to be given in cases where recommendations have not been implemented.

PART III - AMENDMENTS TO THE <u>SPECIAL IMPORT MEASURES ACT</u>
Clauses 23-45, p. 11-40

Part III of Bill C-2, which amends the <u>Special Import Measures Act</u> (<u>SIMA</u>), Canada's anti-dumping and countervailing duty law, implements Chapter 19 of the Free Trade Agreement by: (a) providing for continuation of the payment of duties during binational panel or court review proceedings; (b) allowing decisions respecting the application of <u>SIMA</u> to goods imported from the United States to be referred to a binational panel for resolution; and (c) defining when and in what circumstances decisions of the Canadian International Trade Tribunal (the

"Tribunal") or the Deputy Minister of National Revenue for Customs and Excise (the "Deputy Minister") may be appealed to the Federal Court of Appeal.

1. Payment of Duty

SIMA provides for the payment of provisional duty on imported goods where the Deputy Minister of National Revenue for Customs and Excise makes a preliminary determination of dumping or subsidizing. It also provides that duty payable pursuant to a Tribunal decision will continue to be payable unless the decision is overturned on appeal by the Federal Court of Appeal.

Bill C-2 expands the situations in which duties continue to be payable to include: proceedings resulting from a binational panel referring a decision back to the Tribunal for reconsideration (clause 26); appeals under the new section 96.1 of SIMA to the Federal Court of Appeal (clause 27); a binational panel review of a Tribunal decision or a decision of the Deputy Minister relating to U.S. goods (clause 28); and an appeal of a final determination by the Deputy Minister of dumping or subsidizing (clause 28).

SIMA also provides that where a decision ordering the payment of duty is overturned, any duty already paid pursuant to that decision is refunded. Clause 29 of Bill C-2 amends SIMA to allow for the refunding of duty if the Federal Court of Appeal or a binational panel sets aside such a decision.

2. The Creation of Binational Panels

Clause 42 of Bill C-2 provides for the review of "definitive decisions" of the Tribunal and the Deputy Minister by a binational panel to be established in accordance with that clause and Chapter 19 of the FTA. These decisions consist mainly of final decisions of the Deputy Minister respecting dumping and subsidizing, Tribunal decisions regarding material injury, and re-determinations by the Deputy Minister.

According to Article 1904 of the Free Trade Agreement, either the Canadian or the United States government can request that a panel review a final antidumping or countervailing decision made by the relevant authorities in each country. In addition, either government can

and must request a panel review when petitioned by any person who would ordinarily be entitled to seek a review of such a decision in a court of law (for example, importers, and manufacturers). When a panel review is requested, other avenues of appeal are not available (new section 77.11). If, within the time limits established by the FTA, a panel review is not requested, then antidumping and countervailing duty decisions can be appealed to the courts provided notice of the intention to commence a judicial review is given to both governments (subparagraph 15(g) of Article 1904 and new section 77.12).

A panel is to be established in accordance with the provisions of the FTA. On completion of a review, the panel must determine whether the grounds on which the review was requested have been established, and make an order confirming the decision or referring the matter back to the Tribunal or the Deputy Minister, as the case might be, for reconsideration (new subsection 77.15(3)). On its own initiative or in response to a request, a panel may review the action taken by the Tribunal or the Deputy Minister on a referral back and make a further order (new subsection 77.15(4)).

The bill sets out the obligations of the Deputy Minister and the Tribunal with respect to a matter referred back to them by a panel. First, they are required to take action which is not inconsistent with the decision of the panel (new section 77.16). Clause 31 further defines the duties of the Deputy Minister with respect to a referral back of a final determination of dumping or subsidizing or a decision to terminate an inquiry. Pursuant to that clause, he can confirm, rescind or vary the decision.

Subject to the availability of an "extraordinary challenge" procedure (new section 77.17), panel decisions are final and binding and not subject to appeal (new section 77.2). The FTA provides that where there has been gross misconduct, bias or a serious conflict of interest on the part of a panel member, or where the panel has seriously departed from a fundamental rule of procedure or has manifestly exceeded its powers so as to materially affect a decision, then either government may request that a committee be established to review the panel's decision. Where the

committee finds that any of the grounds referred to above have been established, it may annul the original panel decision or remand it to that panel for action to bring the committee's decision into effect (new section 77.19).

Article 1909 of the FTA provides for the creation of a permanent Secretariat to facilitate the operation of Chapter 19 of the Agreement and the work of the panels and committees to be convened pursuant to that Chapter. New sections 77.23 and 77.24, as found in clause 42 of the bill, provide for the creation of the Secretariat and the appointment of the Canadian Secretary, an official of this body.

It is important to note that the standard of review to be employed by a panel when reviewing a Canadian decision is that set out in subsection 28(1) of the Federal Court Act. Subsection 77.11(4) confirms this by providing that a review of a definitive decision may be requested by the Canadian government only on a ground set out in subsection 28(1).*

It should also be noted that Bill C-2 contains other proposed amendments to SIMA which, among other things, require reasons to be given by both the Tribunal and the Deputy Minister for their decisions and notice of such decisions to be published in the Canada Gazette. These amendments are designed to facilitate the review process established under Chapter 19 of the FTA.

3. Appeals Through the Court System

Although a review of a final determination by a panel preempts review by a court, the bill permits an appeal to the Federal Court of Appeal (FCA) of antidumping and countervailing duty decisions by the Tribunal or the Deputy Minister in respect of goods originating in the U.S., where a panel review has not been initiated by either government. In respect of goods imported from countries other than the U.S., such appeals are permitted in the circumstances outlined in the bill.

---

* Subsection 28(1) of the Federal Court Act provides that a decision may be reviewed on the following grounds: (a) failure to observe a principle of natural justice, or acting beyond or refusing to exercise jurisdiction; (b) error of law; or (c) basing a decision on an erroneous finding of fact made in a perverse or capricious manner or without regard to the relevant material.

Clause 44 of Bill C-2, which provides for appeals to the FCA, in fact, broadens the scope of such proceedings since its criteria for allowing certain decisions of the Deputy Minister to be appealed are more comprehensive than those found in section 18 of the Federal Court Act. The standard of review established in this clause is identical to that in subsection 28(1) of the Federal Court Act.

On an appeal under clause 44, the FCA can, among other things, set aside a decision of the Tribunal or the Deputy Minister and refer the matter back for determination in accordance with its directions. Bill C-2 proposes other amendments to SIMA, which require both the Tribunal and the Deputy Minister to act upon a matter referred back to them by the FCA (clauses 31, 33 and 36).

PART IV - RELATED AND CONSEQUENTIAL AMENDMENTS

Department of Agriculture Act
Clause 46, p. 40

Clause 46 adds a new section, 5.1, to the Department of Agriculture Act to enable the Governor in Council to make regulations to implement Article 708 of the Free Trade Agreement. This Article concerns technical regulations and standards for agricultural, food, beverage and certain related goods.

Under the Free Trade Agreement, both parties have agreed, among other things, to: harmonize technical regulatory requirements and inspection procedures; establish reciprocal training programs and use each other's personnel for testing and inspection; establish common data and information requirements for the approval of new goods and processes; and work toward eliminating and preventing technical regulations and standards that are an arbitrary, unjustifiable or disguised restriction on bilateral trade. Thus, the new enabling power permits regulations to be made to move toward these goals. In addition to general matters, there is granted a power to exempt any person or goods imported from the U.S. from the provisions of any Act or regulation.

Bank Act
Clauses 47-49, p. 40-42

These clauses amend the Bank Act to exempt U.S. residents from certain restrictions on the ownership of Canadian banks (Article 1703 FTA).

Changes to the definition of "non-resident" under section 109 of the Bank Act exempt U.S. residents from the restriction that aggregate holdings of bank shares by non-residents not exceed 25% of the total issued and outstanding shares of a bank.

There is a general 10% limit on the ownership of bank shares by any single individual or associated group (except for Schedule II banks, which may be wholly-owned subsidiaries of foreign banks). However, in order to facilitate the establishment of new banks, section 114 of the Act empowers the Governor in Council to allow a new bank to issue shares to Canadian residents in excess of the 10% limit for periods of up to ten years. Clause 47 of Bill C-2 amends section 114 to include U.S. residents among the shareholders who could qualify for this exemption from the 10% ownership limit.

Section 173 of the Bank Act prohibits a Schedule II bank from opening any more than a single branch in Canada without the prior approval of the Minister of Finance. Clause 48 of Bill C-2 exempts Schedule II banks owned by U.S. residents from this requirement.

Subsection 302(8) of the Bank Act prohibits the incorporation of a new foreign bank subsidiary in Canada or an increase in the authorized capital of a foreign bank subsidiary if such action would have the effect of raising the average outstanding assets of all foreign bank subsidiaries to more than 16% of the total domestic assets of all banks in Canada. Clause 49 of Bill C-2 reduces this asset limit from 16% to 12%, but exempts U.S. bank subsidiaries from the limit.

Broadcasting Act
Clauses 50-51, p. 42-43

These clauses of the bill implement, in part, Article 2006 of the FTA by amending Part II of the Broadcasting Act to allow simultaneous substitution to continue but to maintain commercial deletion at only its current levels.

Simultaneous substitution, also known as simulcasting, allows a local television broadcaster to require local broadcast receiving undertakings, i.e., the local cable companies, to replace a distant signal, either U.S. or Canadian, with the local signal carrying the same program but different advertisements. The purpose is to safeguard the advertising revenues of local TV stations. These revenues enable the stations to meet their Canadian content requirements.

Commercial deletion, on the other hand, is the blacking out of U.S. commercials and their replacement with a slide or interlude of some kind. Canadian viewers, whose system deletes commercials, if they are tuned to a show of U.S. origin on a Canadian channel, will see Canadian adverts; if they are tuned to the same show on a U.S. channel, they will see no adverts. Commercial deletion does not protect the advertising revenues of Canadian TV stations.

Simultaneous substitution and commercial deletion are not mentioned in the Broadcasting Act itself, but the CRTC is the regulatory body obliged to implement the objectives of Canadian broadcast policy. To this end, the CRTC is empowered to make regulations and attach conditions of licence. Current CRTC regulations require only Class 1 systems, defined as systems with over 6,000 subscribers, to simulcast. Currently, commercial deletion is carried out only in Calgary and Edmonton, although in the past this practice was more widespread.

Bill C-2 implements the Free Trade Agreement in the following ways. Subclause 50(1) prohibits the CRTC from requiring cable systems to delete commercials except where such systems were required to do so before 4 October 1987, and are in fact deleting commercials. Lapsed systems will not be allowed to restart commercial deletion. Subclause 50(2), a transitional provision, removes the commercial deletion

requirement from any cable systems licensed after 4 October 1987 but before Bill C-2 was passed. Clause 51 allows the Governor in Council to issue binding directions to the CRTC on simulcasting and commercial deletion. The CRTC is given the right to request such direction.

Canadian International Trade Tribunal Act
Clauses 52-59, p. 43-47

Sections 52 to 59 of Bill C-2, amending the recently enacted Canadian International Trade Tribunal Act, implement Chapter 11 of the FTA which permits either party to take emergency (safeguard) measures to deal with situations where imported goods are causing serious injury or the threat thereof to domestic industry. It establishes one set of criteria respecting injury caused by the increased importation of goods from the U.S. due to the reduction or elimination of tariffs under the FTA, and creates another set to cover injury resulting from imports coming from several countries.

Where goods originating in the United States are, as a result of the reduction or elimination of duties under the FTA, being imported into Canada in such quantities and in such conditions that those goods alone are a substantial cause of serious injury to a domestic industry producing the same or directly competitive goods, Canada can take measures to protect its domestic industry (Article 1101 FTA). On the other hand, safeguard measures instituted to combat injury caused to a domestic industry by goods imported from several countries, can be taken against the portion of these goods originating in the U.S. only where such goods are substantial in number and contribute importantly to the injury. The FTA specifically provides that imports in the range of 5% to 10% of total imports will not normally be considered substantial (Article 1102 FTA).

Clause 52 of Bill C-2 implements Chapter 11 of the FTA by requiring the Canadian International Trade Tribunal to respond to a request by the Governor in Council as to whether, as a result of the reduction or elimination of tariffs pursuant to the FTA ("bilateral inquiry"), U.S. goods are being imported into Canada in such increased quantities and in such conditions that they alone constitute a principal cause of serious

injury to the production in Canada of like or directly competitive goods. A "principal cause" is defined as one that is no less important than any other cause of the serious injury.

Clause 53 authorizes the Tribunal, in the course of a "global" inquiry into whether the importation of certain goods is causing or theatening to cause serious injury to Canadian production, to determine whether those goods which originated in the U.S. form a substantial portion of all imported goods of that sort and whether the U.S. goods contribute importantly to the injury. For the purpose of this clause, in the FTA "contribute importantly" implies an important cause but not necessarily the most important cause of the serious injury.

Section 56 of the bill allows any domestic producer of goods that are like or directly competitive with goods being imported into Canada to file a written complaint with the Tribunal alleging that as a result of the lowering or elimination of a tariff pursuant to the FTA, goods are being imported in such increased quantities as to be, alone, a cause of serious injury to domestic competitors.

<u>Canadian Wheat Board Act</u>
Clause 60, p. 47-48

Clause 60 is designed to give the Governor in Council, under section 34 of the <u>Canadian Wheat Board Act</u>, the power to make regulations allowing the importing of wheat and wheat products from the United States.

The signatories to the Free Trade Agreement have agreed to eliminate import licences for grains and grain products when the support levels for American producers of wheat, oats and barley become equal to or less than those available to Canadian producers. Article 705 of the Agreement imposes certain conditions on the importing of grains and grain products, and these amendments to section 34 of the <u>Canadian Wheat Board Act</u> make it possible to implement those conditions. Canada is then in a position to insist that grains imported from the United States for consumption be accompanied by an end-use certificate and be consigned directly to a processing facility, thus preventing any re-exporting. Grain imported for feed must be denatured, and the Minister of Agriculture, in

compliance with the Seeds Act, has to issue a certificate for grain imported from the United States for seed use.

Copyright Act
Clauses 61-65, p. 48-54

Clauses 61-65 of Bill C-2 amend the Copyright Act in order to implement Article 2006 of the Free Trade Agreement respecting retransmission of broadcast signals.

Article 2006 stipulates that each country's copyright law must provide copyright holders in the other country with a right of equitable and non-discriminatory remuneration for retransmission of broadcast signals.

Clause 63 states that retransmission of local signals in their entirety is lawful but retransmitters of distant signals have to pay royalties and comply with any terms and conditions under the Copyright Act. Networks and persons who transmit a work to the public are jointly and severally liable for transmitting a program.

The Copyright Act is amended to provide the Copyright Appeal Board (Copyright Board, as the provisions of Bill C-60 come into force) with certain powers to make regulations regarding its practice and procedure. Clause 65 provides for the filing of statements of proposed royalties for retransmission, times for filing and the period of time when royalties are to be in effect. Proposed rules of operation for the Board are also outlined, including those relating to publication of statements of royalties in the Canada Gazette, as well as their consideration and certification. The amendments to the Copyright Act also provide for the collection of royalties from collecting bodies.

Customs Act
Clauses 66-81, p. 54-63

These clauses of Bill C-2 amend the Customs Act in order to implement certain changes in customs administration in Annex 406 of the Free Trade Agreement and parts of Article 404 related to the drawback of customs duties.

Annex 406 of the FTA includes rules for the declaration and certification of the origin of goods. It permits either country to require that an importer of goods from the other country make a written declaration that the goods meet the FTA's rules of origin, and upon request, to provide a copy of the exporter's written certification of the origin of the goods. Annex 406 demands that exporters be required to certify the origin of goods and that the customs administrations of both countries keep records of such origin and cooperate in regard to the effective administration of the rules of origin. The Annex also makes rules regarding: consultation on uniform application of the rules of origin; appeals relating to origin; facilitation of flow of trade; and notification and consultation prior to major changes in customs administration.

Article 404 provides for the elimination of duty drawback on bilateral trade within five years of implementation of the Agreement. There are exceptions for certain goods; these include citrus products and fabric imported from third countries which is made into apparel subject to the MFN tariff and exported to the other country.

1. Customs Administration - Declaration of Origin

The provisions of Annex 406 of the Agreement requiring importers to produce proof of origin of goods before their release from customs are implemented by clause 69. The Governor in Council may make regulations specifying classes of persons authorized to furnish proof of origin, specifying required information, and exempting persons or goods from the proof of origin rules.

Clause 70 deals with appeals relating to origin. Determination of the origin of imported goods is to be made within 30 days of their having been accounted for by the importer. Appeals of the determination of the origin of goods will follow the same procedure as that currently set out in the Customs Act for determining Tariff Classification.

Pursuant to clause 72, the Minister may refund overpaid duties resulting from an erroneous determination of the origin of goods imported from the United States.

Clauses 78-80 are concerned with certain technical amendments respecting compliance with the declaration of the origin of goods. They include the provision of certificates of origin to customs officers and the taking of samples to determine origin. They make it an offence to produce false certificates.

2. Duty Drawback

Under clause 73, the Minister is permitted, under proposed section 85.1 of the Customs Act, to grant a drawback of duties under the FTA. However, exporters are required to repay duty drawbacks provided on goods exported to the U.S. where these drawbacks were prohibited at the time of export (clause 74).

Article 404 of the Agreement, dealing with drawback of duties, is implemented, in part, by clause 76. On or after 1 January 1994, no duty drawback may be granted on imported goods subsequently exported to the U.S. Notwithstanding this prohibition, drawback will still be granted for certain goods, including orange or grapefruit concentrates, imported fabric made into apparel and shipped to the United States, and certain other goods.

3. Other Provisions

Clause 71 extends the limitation relating to security for payment of temporary duties or surcharges levied under the Customs Tariff while clause 75 permits the Governor in Council to make regulations regarding the circumstances in which, and classes of goods on which, a temporary duty may be levied under proposed section 60.1 or 60.2 of the Customs Tariff. (Both clauses are consequential on clause 97, which implements Article 1101 of the Agreement respecting bilateral safeguard actions.)

Clauses 67, 68, and 77 require importers and exporters to furnish customs officers with statistical codes for goods but permit the Governor in Council to make regulations exempting persons or goods from this requirement.

Customs Tariff
Clauses 82-112, p. 63-83

These clauses implement, in part, the Agreement's Rules of Origin for Goods (Article 301); provide for the staged elimination of tariffs according to three schedules: immediately, over five years or over ten years (Article 401); allow for bilateral and global actions to safeguard industries from injury by imports (Articles 1101-1102); make special provisions for "snap back" of tariffs on fruits and vegetables for a period of 20 years (Article 702); permit the continued exemption from duty for machinery and equipment not available in Canada (Annex 401.6); implement, in part, the provisions related to duty drawback (Article 404); implement, in part, the elimination of duty waivers (Article 405); and eliminate the embargo on the import from the U.S. of used automobiles (Article 1003) used aircraft (Annex 407.5) and certain periodicals (Article 2007).

1. Rules of Origin

Clause 84 repeals sections 13-16 of the Customs Tariff dealing with determination of origin of goods by the Minister and substitutes new section 13, which is similar but also permits the Governor in Council to determine when goods are entitled to the benefit of the various tariff classifications.

2. Tariff Elimination

Clause 85 clarifies which goods receive the "Most Favoured Nation" (MFN) Tariff after the "United States Tariff" (UST) column has been added to Schedule 1 of the Customs Tariff. The staging categories for the reduction of duties on goods originating in the U.S are implemented by clause 87, which also sets out conditions that goods have to meet in order to be entitled to the benefit of the U.S. Tariff.

It is clarified in clause 90 that the benefit of the General Preferential Tariff as set out in section 35 of the Customs Tariff and the benefit of the free rate of tariff as set out in section 37 do not apply to goods from countries not specifically included under these sections.

Clause 92 amends paragraph 46(b) of the Customs Tariff by providing that goods which fail to meet the conditions for entitlement to the benefit of tariff treatment under any other section receive the General Tariff. Previously, this section of the Customs Tariff provided only for goods which failed to meet the MFN tariff treatment requirements.

Schedule I to the Customs Tariff is repealed by clause 106 and the schedule set out in Part B of the Schedule to Bill C-2 substituted. (Schedule I contains the tariff classification of goods for import.) Clause 107 amends Schedule II of the Customs Tariff, which provides for reduction or removal of tariffs on some goods by striking out certain commodity codes and inserting the codes in Part C of the Schedule to Bill C-2. The list of machinery and equipment set out in Schedule VI of the Customs Tariff as eligible for duty free status is altered under clause 109.

3. Declaration of Origin

Clauses 86, 88, 91, 93, 94, 95 state that in order to receive the benefit of each of the various tariff classifications, including Most Favoured Nation, British Preferential, General Preferential and special rates of duty for New Zealand, Australian or Commonwealth Caribbean Countries, proof of origin of goods is to be given in accordance with the Customs Act rather than with the Customs Tariff. (These clauses are consequential on clause 69 of Bill C-2, which amends the Customs Act to provide rules regarding the declaration and certification of the origin of goods in Annex 406.)

4. Bilateral Actions

As provided for in clause 97, which implements Article 1101, the Governor in Council may: suspend any reduction in duties set out in the Agreement (Article 1101, subparagraph 1(a)); for goods on which a duty is imposed on a seasonal basis, raise the duty to a level not exceeding the Most Favoured Nation rate in effect in the season preceding 1 January 1989 (Article 1101, subparagraph 1(c)); raise the duty to a level not exceeding the lesser of either the MFN rate of duty in effect on 31 December 1988 or

the MFN rate of duty in effect at the time (Article 1101, subparagraph 1(b)).

No order may be made more than once during the period of 1 January 1989 to 31 December 1998 (Article 1101, subparagraph 2(c)) or remain in effect for more than three years (Article 1101, subparagraph 2(b)).

Clause 98 permits the Governor in Council to compensate other countries for safeguard actions (taken under Articles 1101 or 1102) by liberalizing tariffs on other goods imported from these countries.

5. Global Actions

Clause 96 implements Article 1102 of the Agreement respecting global safeguard actions to protect domestic producers from injury by imports. Goods imported from the U.S. are not subject to safeguard actions unless these contribute "importantly" to serious injury to Canadian producers.

A surtax on goods originating in the U.S. which have caused injury to domestic producers will expire 180 days after an order applying the tax is made or, if Parliament is not sitting, on the expiration of the fifteenth sitting day after the 180 days. The order will continue to apply if Parliament passes a resolution, or imports are determined to be still causing harm. The Governor in Council can revoke an order applying a surtax on goods originating in the U.S.

A surtax on goods not originating in the U.S. may also be applied to U.S. goods if there is a surge of U.S. imports of such goods or the effectiveness of the surtax is being undermined. In taking such an action affecting U.S. goods, the Governor in Council is guided by the provisions of Article 1102 subparagraph 4(b) which prohibit reducing imports from the other Party below the trend of imports over a reasonable base period.

6. Special Provisions for Fresh Fruit and Vegetables

Clause 97 deals with imports of fresh fruit and vegetables from the U.S. These may, by order of the Minister of Finance, be made subject to a temporary duty which, together with any existing duty, may not

exceed the lesser of the MFN tariff in effect in the season prior to 1 January 1989 and the MFN tariff rate in effect at the time the order is made (Article 702, paragraph 2). The temporary duty on fresh fruit and vegetables may only be imposed once in a particular region or once on a national basis in any twelve-month period (Article 702, paragraph 3). Where emergency actions have been taken (under Articles 1101 and 1102) and these affect fresh fruit and vegetables, no order may be made under new section 60.2 (Article 702). Fresh fruit and vegetables purchased prior to the coming into force of an order but in transit when the order comes into force may not be subject to the temporary duty. An order is revoked by the Minister of Finance when the conditions in Article 702, paragraph 4 have been met or it ceases to have effect 180 days after being made.

7. Machinery and Equipment

Clauses 100 and 101 explicitly exclude from section 32 of the Customs Act, machinery and equipment included on a list supplied by the Minister of National Revenue and entitled to the benefit of the U.S. tariff and therefore permitted duty-free entry into Canada.

Under clause 105, duties may be refunded on goods, including machinery and equipment, which are not dutiable (listed in Annex 401.6 of the Agreement).

8. Duty Drawback

If goods have received a drawback of customs duties and subsequently been exported to the U.S. on or after 1 January 1994 or on a later date as might be fixed by order of the Governor in Council, the person who exported the goods and the person to whom duty relief was granted will be liable to repay this amount (clause 102). Exceptions will be made for certain goods, including re-exports, goods imported from the U.S., orange and grapefruit concentrates, imported fabric made into apparel, and other goods prescribed by the Governor in Council.

9. Duty Waivers

Effective 1 January 1998, clause 108 will remove certain goods from Schedule IV of the Customs Tariff, which lists imports eligible for duty drawback.

10. Print-in-Canada Requirement

Clause 110 removes from the list of goods prohibited entry into Canada (Schedule VII) periodicals printed outside Canada and containing more than 5% Canadian advertising. (This amendment is consequential to clause 133 which amends the Income Tax Act.)

11. Embargo on Used Automobiles

Article 1003 of the Agreement is implemented by clause 111 which amends the provision in Schedule VII of the Customs Tariff prohibiting the importation of used motor vehicles into Canada. The embargo will be phased out for used automobiles imported from the U.S.

12. Embargo on Used Aircraft

Clause 112 implements a section of Annex 407.5 of the Agreement by amending Schedule VII to the Customs Tariff to provide used U.S. aircraft with an exception from the prohibition on import.

Excise Tax Act
Clauses 113-115, p. 83-84

Canadian citizens returning to Canada are permitted to import, free of duty and tax, goods to a limited value which is dependent on the length of time the individual has spent abroad. For instance, after an absence from Canada of at least 24 hours, goods free of duty and tax may have a value of up to $20; after an absence of at least 48 hours, such goods may have a value of up to $100; after an absence of at least seven days, such goods may have a value of up to $300 (only once per calendar year).

In addition, after an absence from Canada of at least 48 hours, the next $300 worth of goods has both duty and sales tax applied. Previous to the coming into force of Bill C-2, this next $300 worth of

goods had a flat 20% rate applied when a person was returning from a country identified as a Most Favoured Nation (MFN) (under the GATT). Implicit in this rate of duty was a 12% sales tax and a 7.1% rate of duty.

Sections 113 and 114, together with section 87 of Bill C-2, have the effect of separating the 20% tax previously applied to such goods into its sales tax and duty components. Since all duties on U.S. goods are being phased out under free trade, Bill C-2 requires the elimination (over 10 years) of the duty component (7.1%) on this category of U.S. purchased goods, while the 12% sales tax will remain (section 114). The effective rate of 20% will continue to apply to this category of goods purchased in other (MFN) countries.

Commercial samples are exempt from payment of sales tax when temporarily imported for purposes of exhibition or demonstration (clause 115).

Export and Import Permits Act
Clauses 116-123, p. 84-89

These clauses of Bill C-2 implement Article 1102, and Rules 17 and 18 of Section XI of Annex 301.2 of the FTA.

Article 1102 of the Agreement preserves either country's right to take action on a global basis when imports from any country are causing serious injury to domestic producers.

Rules 17 and 18 of Section XI of Annex 301.2 of the Agreement set quotas for apparel imports from either country when these are made from fabrics imported from third countries. Quantities of such apparel below the quotas qualify for the tariff treatment set out in the Agreement, while quantities in excess of the quotas are subject to the MFN rate of duty.

1. Global Actions

Clause 117 (subsection 5(4.1)) exempts the United States from the provisions of subsection 5(2) of the Export and Import Permits Act, which places goods that are causing injury to domestic producers on the Import Control List. The U.S. is exempt unless: a) the quantity

originating in the U.S. represents a substantial share of the total imports of these goods; b) the goods originating in the U.S. are causing or are likely to cause serious injury to domestic producers. An order which initially excluded U.S. goods can subsequently be made to apply to these if there is a surge in imports from the U.S. or if the effectiveness of the order is being undermined; such an order must state whether it applies to goods originating in the U.S. The Governor in Council may also include goods originating in the U.S. on the Import Control List in order to facilitate the collection of information on these.

Goods originating in the U.S. which have been placed on the Import Control List to limit their import, are deemed to be removed from the Import Control List either on the day specified in the order or on the day when goods of the same kind were removed from the List.

Clause 119 is consequential on the proposed amendment in clause 117, and permits the Governor in Council to place goods originating in the U.S. on the Import Control List. Subsection 8(3) allows the Minister to issue permits to import goods originating in the U.S. even when these goods have an order restricting their import. This is to avoid contravening subparagraph 4(b) of Article 1102 of the Agreement which prohibits restrictions that would reduce imports below the trend in a recent base period.

Pursuant to proposed subsection 10(2) referred to in clause 122, the Minister may amend, suspend, cancel or reinstate any permit, certificate or other authorization which has been issued for goods placed on either the Import Control List or the Export Control List solely to facilitate information collection. Paragraph 10(2)(c) states that suspension, cancellation, etc., may result when goods formerly included on such lists solely for that purpose are subsequently included on either list for another purpose.

2. Rules of Origin for Apparel

Clause 118 amends the Export and Import Permits Act by providing the Governor in Council with the power to place apparel made from third country fabrics on the Export Control List or the Import Control List in order to collect information on these goods. However, the Minister

may issue import or export permits for such apparel placed on the Import or Export Control Lists for that purpose (clause 120). (These goods are provided for in Rules 17 and 18 of Section XI of Annex 301.2 of the Agreement.) Imports of fabric or yarn from third countries may also be placed on the Import Control List to facilitate the collection of information.

The Minister is permitted to issue a certificate to allow export to the United States of apparel made from third country textiles stating the quantity of goods in a shipment which is eligible to receive the benefit of the tariff in Schedule I to the Customs Tariff (clause 121).

Regulations respecting the issuance of certificates, defining "origin" for the purposes of the Act, and regarding the application or provision of regulations respecting the origin of goods may be made by the Governor in Council pursuant to clause 123.

Canada Grain Act
Clauses 124-131, p. 89-93

The purpose of these clauses is to amend the Canada Grain Act to implement new provisions regarding the importation of grain. Specifically, these clauses provide for end-use certificates and their monitoring; allow the examination of feed grain; allow the inspection of premises, equipment, grain, grain products, screenings, books, records, and bills of lading located at any elevator, any premises of the licensee of an elevator, any premises of a licensed grain dealer or any premises referred to in an end-use certificate; and enhance the power of the Canada Grain Act to provide penalties for persons who use any grain imported for a purpose other than that specified in the end-use certificate at the facility referred to in the certificate.

Under the provisions of the Free Trade Agreement, Canada and the U.S. have agreed that Canadian import permit requirements for wheat, barley, oats and their products will be eliminated, once the level of government support for those grains in the U.S. becomes equal to or less than the level in Canada. Canada can also require that U.S. grain be accompanied by an end-use certificate declaring that the grain is imported

for consumption in Canada and consigned directly to a milling, manufacturing, brewing, distilling or other processing facility for consumption at that facility.

Importation of Intoxicating Liquors Act
Clause 132, p. 93

The purpose of this clause of the bill is to allow Canadian distillers to import distilled spirits in bulk from the U.S. for bottling in Canada. Previously, Canadian distillers were permitted to import intoxicating liquor for blending or flavouring purposes only. The imported liquor could not be bottled and sold in Canada.

Chapter 8 of the Free Trade Agreement is designed to promote non-discriminatory treatment of American wine and distilled spirits in Canada and this clause removes the restriction on bulk imports, in keeping with that Chapter.

Income Tax Act
Clause 133, p. 93-94

Section 19 of the Income Tax Act limits the ability of Canadians to deduct advertising expenditures in non-Canadian newspapers and periodicals in order to restrict such foreign competition faced by Canadian newspapers and periodicals.

Article 2007 of the Free Trade Agreement requires Canada to eliminate the provision that newspapers and periodicals must be typeset and printed in Canada in order for taxpayers to be eligible for the deduction for advertising expenses. Under that Article, Canada agreed to repeal section 19(5)(a)(i)(A) and (B) and section 19(5)(a)(ii)(A) and (B) of the Income Tax Act. Such repeal allows taxpayers to deduct advertising expenses in newspapers and periodicals, no matter where these are typeset and printed.

Clause 133 of Bill C-2, however, maintains the restriction in section 19 of the Income Tax Act but limits the deductibility of advertising expenses to: a) Canadian issues of newspapers or periodicals;

and b) those which would otherwise be considered Canadian except for the fact that they are printed or typeset wholly in the United States, or jointly in the United States and Canada. Although the limitation on the deductibility of advertising expenses remains, the United States is exempted from it. For the purposes of this clause, "United States" is defined as the 50 states.

Canadian and British Insurance Companies Act
Clause 134, p. 94-95

Clause 134 implements subparagraph 1(b) of Article 1703 of the Free Trade Agreement. This exempts United States residents from restrictions that limit foreign ownership of Canadian-controlled federally constituted life insurance companies.

Section 19 of the CBIC Act prohibits the transfer of shares of any life insurance company to a non-resident of Canada if the transfer would result in any single non-resident owning more than 10% of the company or non-residents in the aggregate owning more than 25% of the company. Clause 134 of Bill C-2 amends the definition of "non-resident" under section 18 of the CBIC Act to exempt U.S. residents from this prohibition and thus enable U.S. residents to bid for acquisition of Canadian life insurance companies. Under previous provisions, U.S. residents, like other non-residents of Canada, could establish a new life insurance company in Canada but were not permitted to acquire control of an existing company.

Investment Canada Act
Clauses 135-137, p. 96-102

The purpose of clauses 135-137 is to implement undertakings contained in Chapter 16 (Investment) of the Free Trade Agreement, including those found in Annex 1607.3. This Chapter is designed to ensure that future regulation of Canadian investors in the United States and of American investors in Canada will correspond to the regulation of domestic investors within each country.

Chapter 16 of the Agreement says that national treatment will be applied to Canadian investors in the United States and to U.S. investors in Canada regarding the creation of new businesses (Article 1602). As well, the review threshold for direct acquisitions outside the oil and gas and uranium sectors will be raised annually over a four-year period (Article 1607 and Annex 1607.3). Article 1607 and Annex 1607.3 provide that the review of indirect acquisitions outside the oil and gas and uranium sectors, in which foreign control of a given firm has been transferred from one country to another, will be phased out over the same period. Apart from grandfathered exemptions identified below, once national treatment has been established following the above-mentioned review process, the two governments will be unable to discriminate in their regulation of business firms on the basis of origin of control (Article 1602). In Article 1603 both countries agree to prohibit those investment-related performance requirements which would result in a distortion of bilateral trade, with the exception of performance requirements attached to government subsidies and procurement. In the case of any nationalization of certain industries, adequate compensation will have to be paid to the owners of the foreign-controlled firms (Article 1605). Also, restrictions on the repatriation of profits or the proceeds of a sale will not normally be imposed, except where domestic laws of general application are implemented (Article 1606).

The above initiatives apply only to future modifications in laws and/or regulations. Therefore, unless specific changes are required by the Agreement, existing laws, policies and practices will remain in effect. This grandfathering provision is to ensure that: the oil and gas and uranium sectors will not be affected by changes to the Investment Canada Act found in Annex 1607.3; restrictions on foreign ownership in the communications and transportation industries remain in place; both governments continue to have the right to tax foreign-owned firms on a different basis from domestic firms, as long as arbitrary discrimination does not occur (Article 1609); and sales of Crown-owned firms are exempt from national treatment obligations (Article 1602).

Bill C-2 amends the Investment Canada Act in the following manner. Clause 135 contains a new section 14.1 which enacts the foreign investment threshold schedules for both direct and indirect acquisitions found in Annex 1607.3 of the Agreement. As well, it commits the Minister responsible for Investment Canada to publish in the Canada Gazette the investment review limits for direct acquisitions for the years following the planned four-year implementation period; these limits are determined according to a prescribed formula. Section 14.1 also contains a list of the sectors to be excluded from its application. These include the oil and gas, uranium, financial services, transportation and cultural sectors.

A second new section, 14.2, enables the Cabinet to establish regulations designed to carry out the provisions of section 14.1 above and to implement all aspects of Chapter 16 of the Agreement.

Two additional clauses of Bill C-2 also amend the Act. Clause 136 renumbers section 24 of the Act as subsection 24(1), as well as adding subsections 24(2) and 24(3). These new provisions give the federal government's departments and agencies authority to purchase cultural enterprises in those instances where Americans are required to divest control (see paragraph 4 of Article 1607 of the Agreement).

Finally, clause 137 repeals subsection 37(1) of the Act and replaces it with one requiring the Minister responsible for Investment Canada to provide any applicant for investment in Canadian firms whose country of origin is unclear, with a written determination of that applicant's nationality.

Investment Companies Act
Clause 138, p. 102-103

The purpose of clause 138 is to implement subparagraph 1(c) of Article 1703 of the Free Trade Agreement. This exempts United States residents from restrictions which limit foreign ownership of Canadian-controlled sales finance companies, as stipulated in subsections 11(1) and 12(2) of the Investment Companies Act.

Clause 138 amends the Act by adding a new section (10.1). New subsection 10.1(1) excludes U.S. residents from the application of sections 11-15 of the Act. New subsection 10.1(2) presents a definition of the term "United States resident" for the purposes of subsection 10.1(1). Finally, new subsection 10.1(3) contains a legal interpretation of controlling interest in a corporation, for the purposes of 10.1(2).

Loan Companies Act
Clause 139, p. 103-104

Clause 139 implements subparagraph 1(d) of Article 1703 of the FTA which, among other things, calls for the removal of restrictions on the ownership of loan companies by U.S. residents.

Section 45 of the Loan Companies Act prohibits the transfer of shares of any loan company to a non-resident of Canada if the transfer would result in any single non-resident owning more than 10% of the company or non-residents in the aggregate owning more than 25% of the company. Clause 139 of Bill C-2 amends the definition of "non-resident" under section 44 of the Loan Companies Act to exempt U.S. residents from this prohibition. The effect of this change will be to enable U.S. residents to bid for acquisition of loan companies in Canada. Under previous provisions, U.S. residents, like other non-residents of Canada, could establish a new loan company in Canada, but were prohibited from acquiring control of an existing company.

Meat Import Act
Clause 140, p. 104-105

Clause 140, which basically reiterates Article 704 of the FTA, amends the Meat Import Act by adding a new section 4.1. This provides that the Minister of Agriculture may not restrict the quantity of meat entitled to the U.S. Tariff of Schedule 1 to the Customs Tariff unless: Canada has restricted the quantity of meat imported from some third country, and the U.S. has no similar restrictions on the quantity of meat

imported from that third country. Restrictions are only temporary and limited to the purpose of preventing frustration of Canada's restrictions on third country imports.

Meat Inspection Act
Clause 141, p. 105

Clause 141 amends the Meat Inspection Act to allow the Governor in Council to make regulations exempting any meat product imported from the U.S. from the provisions of that Act or from regulations relating to imported meat products. This clause implements, in part, Article 708 of the Free Trade Agreement, pursuant to which both parties agreed to an open border for meat inspection and to the establishment of equivalent accreditation procedures for inspection systems and inspectors.

National Energy Board Act
Clauses 142-143, p. 105-108

Clauses 142 and 143 of Bill C-2 amend the import and export licensing provisions of the National Energy Board Act (the "NEB Act") in order to implement certain portions of Chapter 9 of the Free Trade Agreement respecting trade in energy goods. Although it does not expressly alter or eliminate any of the statutory tests relevant to the issuing of an export licence, the FTA requires that the application of those tests be consistent with its energy product export rules.

Pursuant to the FTA, Canada and the United States affirmed their rights and obligations under the GATT with regard to restrictions on bilateral trade in energy goods. While the GATT prohibits certain forms of barriers to trade in these goods, such as minimum export-price requirements, it allows other kinds of export restrictions. Among these are: short-term prohibitions or restrictions to prevent or relieve critical shortages of an essential product; conservation measures that are accompanied by restrictions on domestic production or consumption; export restrictions necessary to ensure essential supplies of a product to a

domestic processing industry during periods when a domestic price is held below world price as part of a government stabilization plan; and measures necessary for the acquisition or distribution of products in general or local short supply.*

Article 904 of the FTA allows any of the aforementioned export restrictions to be maintained or imposed by Canada or the United States with respect to the export of an energy good to the other country, provided it: (a) does not reduce that exported energy good's proportion of the total supply of that good from what it was in the most recent 36 month period; (b) does not (through licences, fees and taxation measures) result in a higher price for exports than the domestic price; and (c) cannot be used to disrupt normal channels of supply to the other country or the normal proportions of specific energy goods supplied to the other country.**

Among other things, the National Energy Board Act gives the National Energy Board (the "NEB" or the "Board") authority to issue, revoke or suspend licences relating to the export of oil, gas, or power or the import of oil or gas (sections 117 and 119). It also sets out certain factors that the Board must consider before a licence can be issued. These include: that the quantity of oil, gas or power to be exported does not exceed the surplus remaining after allowing for reasonably foreseeable requirements for Canadian use (surplus test); that the price to be charged by the exporter for exported power is just and reasonable in relation to the public interest; and that there is equitable distribution of oil or gas in Canada, where oil or gas is to be exported and subsequently imported or where oil or gas is to be imported (section 118).

Clause 142 of Bill C-2 amends the NEB Act to require the Board to give effect to the FTA when exercising its powers and to empower the Governor in Council to make orders for how the Board will give effect to or interpret the Free Trade Agreement. The Board may also suspend

---

* Debra P. Steger, ed., A Guide to the Canada-United States Free Trade Agreement (1988), p. 27.

** Ibid.

making a decision on any matter in order to request such an order from the Governor in Council (new section 119.2).

Pursuant to new section 119.3, the Governor in Council can declare that the maintenance or introduction of a restriction on the export of energy goods to the U.S. is justified under Article 904. If, in the course of a licence proceeding, the NEB believes that the introduction or maintenance of a restriction on exports to the United States is in the public interest, it may ask the Governor in Council to declare whether the restriction is justified under Article 904 (new section 119.4).

The bill limits the power of the Board to refuse to issue a licence or to revoke, suspend or alter a licence or order for the exportation of energy goods to the U.S. where the refusal, suspension, revocation or change constitutes a restriction contrary to Article 904 (new section 119.5). It also allows the Board to disregard the surplus test when issuing a licence for export to the U.S. where no declaration is made by the Governor in Council under new section 119.4.

Clause 143 of the bill amends subsection 120(2) of the NEB Act to empower the Governor in Council to exempt from the application of regulations establishing the export price of oil or gas, exports of those products destined for particular countries. It also allows different export prices for oil or gas to be set for different countries. Through regulations to be made under these new provisions, it is possible to exempt Canadian oil and gas exports to the U.S. from pricing regulations and to create a particular price structure for the U.S. market.

Seeds Act
Clause 144, p. 108

This amendment carries out the purposes of clause 60 of Bill C-2 which amends the Canadian Wheat Board Act. Clause 144 of Bill C-2 states that the Minister of Agriculture is empowered to issue certificates certifying that the applicable provisions and regulations of the Seeds Act have been complied with in respect of seeds of wheat imported into Canada.

The amendment to the Seeds Act is in accordance with Article 705 of the Free Trade Agreement: "Market Access for Grain and Grain Products." Sub-paragraph 1(c) of Article 705 states, in part, that "Canada may require that the grain (imported from the United States) be ... accompanied by a certificate issued by Agriculture Canada, or its successors, if for seed use."

The amendment to the Canadian Wheat Board Act (clause 60 of Bill C-2) states, in part, that "to permit the importation into Canada of wheat or wheat products ... the wheat [must] be accompanied by a certificate issued pursuant to section 4.1 of the Seeds Act, if the wheat is imported for seed use."

The Seeds Act regulates the sale of seed in Canada, including seed of wheat and other cereals. Under the previous legislation, only wheat seed varieties registered under the Seeds Act were permitted to be imported into Canada for purposes of sale. However, wheat seed could also be imported for research purposes or for re-export to another country. The amendment proposed in clause 144 was felt to be necessary to expedite importations of wheat seed which meet the requirements of the Seeds Act.

Standards Council of Canada Act
Clause 145, p. 108

The purpose of this clause of the bill is to provide recognition in Canada for organizations in the United States engaged in the testing and certifying of non-agricultural goods, that is, in determining whether such goods meet pre-determined technical standards.

Chapter 6 of the Free Trade Agreement is designed to prevent the introduction of hidden barriers to trade that are standards-related. Technical standards for non-agricultural goods should be used to achieve a legitimate domestic objective (such as health and safety), not to impede trade. With Canada recognizing the accreditation systems for testing facilities, inspection agencies and certification bodies of the United States, and the United States doing the same for similar Canadian organizations, the way is formally open to make standards-related measures,

product approval procedures, accreditation, and acceptance of test data closely compatible.

Statistics Act
Clause 146, p. 109

The purpose of clause 146 is to implement Article 2101 of the Free Trade Agreement. This Article calls for Statistics Canada to collect, tabulate, analyze, publish and exchange, in a similar way to the United States government, the data which are required to administer and enforce the provisions of the Agreement.

Clause 146 amends the Statistics Act by adding a new section (21.1). This section requires Statistics Canada to establish a coding system for imports to and exports from this country. This enables the agency to collect and publish the relevant trade data. Clause 146 also requires the federal government to publish this coding system in Part I of the Canada Gazette.

Trust Companies Act
Clause 147, p. 109-110

Clause 147 implements subparagraph 1(e) of Article 1703 of the Free Trade Agreement which, among other things, provides for the removal of restrictions on the ownership of trust companies by U.S. residents.

Section 38 of the Trust Companies Act prohibits the transfer of shares of any trust company to a non-resident of Canada if the transfer would result in any single non-resident owning more than 10% of the company or non-residents in the aggregate owning more than 25% of the company. Clause 147 of Bill C-2 amends the definition of "non-resident" under section 39.1 of the Trust Companies Act to exempt U.S. residents from this prohibition. The effect of this change is to enable U.S. residents to bid for acquisition of Canadian trust companies. Under previous provisions, U.S. residents, like other non-residents of Canada, could establish a new trust company in Canada, but were prohibited from acquiring control of an existing company.

Western Grain Transportation Act
Clause 148, p. 110-111

Clause 148 of Bill C-2 amends section 2 of the Western Grain Transportation Act so as to make this law non-applicable in the context of the Free Trade Agreement.

Generally speaking, the signatories of the Agreement want to eliminate, in stages, all agricultural subsidies. Clause 148, in accordance with paragraph 5 of Article 701 of the Agreement, eliminates the subsidies given under the Western Grain Transportation Act to agricultural goods shipped via a Canadian west coast port for consumption in the United States. It is anticipated that this measure will mainly affect millfeeds and canola oil-cakes.

ACCO®

ACCOPRESS™MC

YELLOW	25070	JAUNE
*BLACK	25071	NOIR*
*BLUE	25072	BLEU*
RL. BLUE	25073	RL. BLEU
*GREY	25074	GRIS*
GREEN	25075	VERT
RUST	25078	ROUILLE
EX RED	25079	ROUGE

ACCO CANADA INC.
WILLOWDALE, ONTARIO

* INDICATES
75% RECYCLED
25% POST-
CONSUMER FIBRE

*SIGNIFIE 75 %
FIBRES RECYCLÉES,
25 % DÉCHETS DE
CONSOMMATION

BALANCE OF PRODUCTS
25% RECYCLED

AUTRES PRODUITS:
25 % FIBRES RECYCLÉES

0 50505 25072 1